

Swain, J

FROM FRIEDMAN KAPLAN SEILER & ADELMAN LLP

(WED) 8.15'07 7:35/ST. 7:34/NO. 4860644656 P 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GMA ACCESSORIES, INC.

Plaintiff,

- against -

BOP, LLC, GIRLSHOP, INC.,
SHOWROOM SEVEN STUDIOS, INC.,
JONATHAN SOLNICKI,
BELMONDO and EMINENT, INC.

Defendants. |
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USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: AUG 21 2007

CONSENT PROTECTIVE ORDER

Civil Action No.: 07CV3219 (LTS)

To expedite the exchange of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, the parties hereby stipulate and agree as follows:

1. The terms and conditions of this Confidentiality Protective Order shall apply to documents or things produced under FED.R.CIV.P. 34, responses to written interrogatories under FED.R.CIV.P. 33, responses to requests for admissions under FED.R.CIV.P. 36, testimony adduced at depositions upon oral examination or upon written request pursuant to FED.R.CIV.P. 30 and FED.R.CIV.P. 31 (hereinafter referred to collectively as "Discovery Material"), responses by a non-party to a subpoena pursuant to FED.R.CIV.P. 45 and documents produced by a party, its affiliates, divisions, subsidiaries, corporate parents,

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1 predecessors or successors in interest, officers, directors,
2 administrators, agents, employees, or other representatives (a
3 "Party") at a hearing on the case but which are not responsive to
4 a request from any other Party.
5

6 2. Discovery Material that a Party believes in good faith to contain commercially
7 sensitive information of the Party or its clients, may be designated as follows:

8 (i) "Confidential Material," marked with the
9 legend CONFIDENTIAL,

10 (ii) "Highly Confidential," marked with the legend
11 HIGHLY CONFIDENTIAL, or

12 (iii) "Attorneys' Eyes Only Material," marked with
13 the legend ATTORNEYS' EYES ONLY

14 Designations of Confidentiality. The following are the
15 only methods by which a party can designate information or
16 documents as confidential:

17 All information contained in any page of any document produced,
18 interrogatory answer, other documentary form of discovery
19 response, or other document may be designated confidential by
20 stamping each and every such page "CONFIDENTIAL," "HIGHLY
21 CONFIDENTIAL," or "ATTORNEYS' EYES ONLY MATERIAL." For documents
22 produced in electronic form, the foregoing requirement shall be
23 satisfied if (i) a person viewing the document on a screen in the
24 format in which it is produced will be able to see the words
25 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "ATTORNEYS' EYES ONLY
26 MATERIAL" on each page to be designated confidential and (ii)
27 when the document is printed in the format in which it was
28 produced in the Action, each printed page to be designated

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2 confidential will contain the words "CONFIDENTIAL," "HIGHLY
3 CONFIDENTIAL," or "ATTORNEYS' EYES ONLY MATERIAL." The parties
4 may also designate information in documents as confidential by
5 alternative methods if approved and agreed to in writing by all
6 parties. Each page designated confidential in accordance with
7 this paragraph, and the information contained on such page, shall
8 be considered confidential unless the designating party states in
9 writing that only a portion of the page is to be treated as
10 confidential.

11 3. The Parties agree that Discovery Material shall not be
12 designated as Attorneys' Eyes Only Material unless it contains
13 especially sensitive confidential material. Generally, the
14 following types of documents are sensitive enough to qualify for
15 the "Attorneys' Eyes Only" designation: documents revealing trade
16 secrets, documents containing patent development information.
17 Documents related to the creation, development, filing, or sale
18 of trademarks, and merchandise sales and marketing documents are
19 generally not considered to be sensitive enough for "Attorneys'
20 Eyes Only" designation.

21 a. Generally, sales and marketing information for merchandise is not
22 subject to "Highly Confidential" protection.

23 4. Information or material that is or has been available
24 to the general public, or is already in the lawful possession of
25 the party receiving the information or material, or is lawfully
26 provided by a third party that is not a party to this action and
27 is not bound by this confidentiality agreement shall not be
28

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1 classified as Confidential Material, Highly Confidential
2 Material, or Attorneys' Eyes Only Material.

3 5. Discovery Material classified as Confidential Material,
4 Highly Confidential Material, or Attorneys' Eyes Only Material
5 shall be so labeled or marked when the document or thing is
6 produced or provided to the party seeking discovery.

7 6. With respect to testimony adduced at depositions upon
8 oral examination of former or current directors, officers,
9 employees, agents, consultants or experts of the Parties, the
10 testimony of the witness shall be deemed Confidential Material
11 until the expiration of thirty (30) days after receipt of the
12 transcript of the deposition by counsel for the deposed Party,
13 unless otherwise designated as Highly Confidential Material or
14 Attorneys' Eyes Only Material on the record at the time of the
15 deposition or otherwise stipulated or ordered. If counsel for
16 any Party believes that the transcript of the deposition or any
17 portion thereof constitutes or contains Confidential Material,
18 Highly Confidential Material, or Attorneys' Eyes Only Material,
19 counsel shall designate in writing to counsel for all other
20 Parties and to the reporter, prior to the expiration of the 30-
21 day period, the specific pages and lines of the transcript that
22 constitute or contain Confidential Material, Highly Confidential
23 Material, or Attorneys' Eyes Only Material. The court reporter
24 transcribing a deposition shall separately bind Confidential
25 Material, Highly Confidential Material, or Attorneys' Eyes Only
26 Material and non-confidential Discovery Material. Counsel for
27 any Party may designate deposition testimony as Confidential
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1 Material, Highly Confidential Material, or Attorneys' Eyes Only
2 Material during the course of a deposition. Prior to the
3 expiration of the time periods set forth in this paragraph, all
4 discovery material shall be treated as Confidential.
5

6 7. If a Party believes that inspections, measuring,
7 testing, sampling or photographing of its processes, products,
8 equipment, premises or other property pursuant to FED. R. CIV. P.
9 34 will reveal or disclose information that it deems in good
10 faith to be Confidential Material, Highly Confidential Material,
11 or Attorneys' Eyes Only Material, that Party shall advise the
12 Party seeking such discovery in advance, and the inspection,
13 measuring, testing, sampling or photographing will be performed
14 only by individuals qualified under this protective order to
15 receive such information. The material discovered shall be
16 treated as Confidential Material, Highly Confidential Material,
17 or Attorneys' Eyes Only Material in accordance with the producing
18 Party's designation.

19 8. If a Party inadvertently produces Confidential
20 Material, Highly Confidential Material, or Attorneys' Eyes Only
21 Material without labeling or marking it with the appropriate
22 legend, the producing Party, promptly upon discovery of the
23 inadvertent production without proper labeling, may give written
24 notice to the receiving Party that the Discovery Material is
25 Confidential Material, Highly Confidential Material, or
26 Attorneys' Eyes Only Material and shall, upon notice, be treated
27 as such in accordance with the provisions of this Protective
28 Order. To the extent that the receiving Party may have already

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1 disclosed such Discovery Material to persons other than those
2 qualified to receive it, the receiving Party shall request that
3 the Discovery Material be returned.
4

5 9. Nothing contained in this Protective Order shall be
6 construed to limit the scope of discovery in this action provided
7 for by the Federal Rules of Civil Procedure, or to preclude any
8 Party from moving the Court for a further order pursuant to FED.
9 R. CIV. P. 26(c) or other provisions of the Federal Rules of
10 Civil Procedure.

11 10. Nothing in this Protective Order shall be construed to
12 require production or disclosure of any Confidential Material,
13 Highly Confidential Material, or Attorneys' Eyes Only Material
14 deemed by counsel for the Party possessing such material to be
15 immune from discovery. Likewise, nothing in this Protective
16 Order shall preclude any Party from moving the Court for an order
17 directing the disclosure of such material.

18 11. Confidential Material, Highly Confidential Material, or
19 Attorneys' Eyes Only Material shall not be used by any person for
20 any purpose other than the prosecution or defense of this action,
21 and shall not be used for any business, competitive, personal or
22 any other purpose, except upon the express prior written consent
23 of counsel for the producing Party or by order of this Court or
24 by order (upon due notice to the producing Party) of another
25 court tribunal of competent authority. Such material shall not
26 be used by the receiving Party in any other litigation or
27 proceeding, including any proceeding before the United States
28 Patent and Trademark Office, the United States Copyright Office

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1 and foreign patent offices, except upon the express written
2 consent of counsel for the producing Party or by order of this
3 Court or by order (upon due notice to the producing Party) of the
4 court or tribunal in which such other litigation or proceeding is
5 pending.
6

7 12. Use at trial of such Confidential Material, Highly
8 Confidential Material, or Attorneys' Eyes Only Material shall be
9 governed by the pretrial order or as otherwise directed by the
10 Court.

11 13. Unless and until the Court rules to the contrary and/or
12 rules that there may be further disclosure and subject to the
13 requirements of paragraph 9 herein, access to and disclosure of
14 Confidential Material or Highly Confidential Material shall be
15 limited to:

16 a. Outside Counsel for the Parties who have
17 entered appearances in this action, their stenographic,
18 clerical and paralegal employees and outside copy
19 services;

20 b. Inside counsel employed by a Party, their
21 stenographic, clerical and paralegal employees;

22 c. Non-employee experts for or non-employee
23 consultants to a Party ("outside experts") whose advice
24 and consultation are being or will be used by the Party
25 in connection with this action, including their
26 stenographic or clerical employees;

27 d. The Parties to this action, including
28 officers, directors, board members and representatives;

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c. The authors, addressees and copy recipients of the Confidential Material or Highly Confidential Material;

f. The Court and its staff and, if applicable, the jury; and

g. Court reporters transcribing any deposition, hearing or trial in this action.

Before any person described in section (c) or (e) of paragraph 13 above is given access to

material designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or

"ATTORNEYS' EYES ONLY MATERIAL", that person shall sign an affidavit containing the

following statement:

I have received and read a copy of the Confidentiality Stipulation and Protective Order dated August __, 2007 entered in GMA Accessories, Inc. v. Bop LLC, et al., Case Number 07 CV 3219 (the "Order") and understand and agree to be bound by its terms. I consent to the exercise of personal jurisdiction by the United States District Court for the Southern District of New York for the purposes of enforcement of the Order, and understand that violation of the terms of this Order may be punished as contempt of court.

Such affidavit shall not be required to be served on any other party but shall be retained by counsel for the party making the disclosure.

14. Unless and until the Court rules to the contrary and/or rules that there may be further disclosure and subject to the requirements of paragraph 14 herein, access to and disclosure of Attorneys' Eyes Only Material shall be limited to:

a. Outside Counsel for the Parties, their stenographic, clerical and paralegal employees and outside copy services;

b. Non-employee experts for or non-employee consultants to a Party whose advice and consultation are being or will be used by the Party in connection

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1 with this action and their stenographic or clerical
2 employees;

3 c. The authors, addressees and copy recipients
4 of the Attorneys' Eyes Only Material;

5 d. All stenographic, clerical, technical,
6 professional and paralegal personnel employed with
7 qualified persons;

8 e. The Court and its staff and, if applicable,
9 the jury; and

10 f. Court reporters transcribing any deposition,
11 hearing or trial in this action.

12 15. Any person in possession of Confidential Material,
13 Highly Confidential Material or Attorneys' Eyes Only Material
14 shall exercise reasonable and appropriate care with regard to
15 storage, custody, and use of such material in order to ensure
16 that the confidential nature of the same is maintained.

17 16. Should Confidential Material, Highly Confidential
18 Material or Attorneys' Eyes Only Material be discussed, disclosed
19 or used as an exhibit at a deposition, the portions of the
20 deposition at which such material is discussed, disclosed or used
21 as an exhibit shall be conducted only in the presence of persons
22 entitled under the terms of this Protective Order to access to
23 such material.

24 17. Confidential Material, Highly Confidential Material or
25 Attorneys' Eyes Only Material may be included in whole or in part
26 with any papers filed with the Court, including, without
27 limitation pleadings, motions or briefs. Papers marked HIGHLY
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1 CONFIDENTIAL or ATTORNEYS' EYES ONLY shall be filed with the
2 Clerk of this Court in sealed envelopes or containers prominently
3 marked with the caption of the case, a general description of the
4 contents of the envelope or container and the notation:

5
6 CONTAINS CONFIDENTIAL INFORMATION
7 UNDER THE PROTECTIVE ORDER
8 TO BE OPENED BY OR AS DIRECTED BY THE COURT

9 or in such other manner as the Court may instruct. The clerk
10 shall maintain such material separate from the public records in
11 this action and shall release such material only to Court
12 personnel, to those entitled to access thereto per the terms of
13 this Confidentiality Protective Order or as further ordered by
14 the Court. Subject to the approval of the Court, attendance at
15 those portions of a hearing or trial in this action during which
16 Highly Confidential Material or Attorneys' Eyes Only Material
17 will be disclosed shall be limited to individuals entitled to
18 access to such materials under the terms of this Protective
19 Order.

20 18. If any party objects to the designation of any
21 discovery material as Confidential Material, Highly Confidential
22 Material or Attorneys' Eyes Only Material, the party shall state
23 the objection by letter to counsel for the party making the
24 designation. If the parties are unable to resolve the objection
25 within three business days, any party may move the Court to do
26 so. Until the Court rules on any such motion, the discovery
27 material shall continue to be deemed Confidential Material,
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1
2 Highly Confidential Material or Attorneys' Eyes Only Material
3 under the terms of this Stipulation and Order.

4 19. Nothing herein shall prevent any party from seeking
5 from the court further, greater or lesser protection with respect
6 to the use of any Confidential Material, Highly Confidential
7 Material or Attorneys' Eyes Only Material in connection with any
8 trial, hearing or other proceeding in this litigation.

9 20. Nothing herein shall be construed to affect in any way
10 the admissibility of any document, testimony or other evidence at
11 trial of this litigation. Nothing herein shall be construed to
12 limit in any way any party's use of its own Confidential
13 Material, Highly Confidential Material or Attorneys' Eyes Only
14 Material.

15 21. Within sixty (60) days after termination of this
16 litigation, counsel shall return all Confidential Material,
17 Highly Confidential Material or Attorneys' Eyes Only Material and
18 copies (including excerpts and summaries) thereof to counsel for
19 the producing party, or, in lieu thereof, certify in writing that
20 such material has been destroyed. Failure to do so shall not
21 constitute a violation until and unless the producing Party, at
22 or after the conclusion of this case, requests that materials be
23 returned or destroyed. Notwithstanding the foregoing, counsel of
24 record for each party may retain one archival copy of pleadings,
25 deposition exhibits, court exhibits and documents included in
26 submissions to the Court.

27 22. No part of the restrictions imposed by the Stipulation
28 may be waived or terminated, except by the written stipulation

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2 executed by counsel of record for each designating party, subject
3 to the approval by the Court, or by an order of the Court for
4 good cause shown. The restrictions provided for herein shall not
5 terminate upon conclusion of this case, but instead shall survive
6 its termination, and shall continue until further Order of this
7 Court.

8 23. The Parties agree that this Confidentiality Protective
9 Order is binding upon execution by the parties irrespective of
10 when it is entered by the Court.

11 FRIEDMAN KAPLAN SEILER & ADELMAN LLP

12 By: Jeffrey R. Wang

13 Jeffrey R. Wang, Esq.
14 Friedman Kaplan Seiler & Adelman LLP
15 1633 Broadway
16 New York, NY 10019-6708
Telephone: (212) 833-1175
Facsimile: (212) 373-7975

17 Attorneys for DEFENDANTS
18 BOP, LLC

19 GARVEY SCHUBERT BARER

20 By: Robert Carrillo

21 Robert Carrillo, Esq.
22 Garvey Schubert Barer
23 100 Wall Street
24 20th Floor
New York, NY 10005
Telephone: (212) 431-8700 (x 4511)
Facsimile: (212) 334-1278

25 Attorneys for DEFENDANTS
26 EMINENT, INC.

FROM FRIEDMAN KAPLAN SEILER & ADELMAN LLP

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1 By: 


2 Andrew T. Sweeney (AS 0724)
3 40 Wall Street
4 New York, New York 10005
5 Telephone: (212) 530-4400
6 Facsimile: (212) 530-4488

7 Attorney for PLAINTIFF
8 GMA ACCESSORIES, INC.

9 Dated: August 20, 2007

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12 So Ordered: 

Hon. Laura Taylor Swain, U.S.D.J.

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